Supreme Court, U. S.
FILED
MAR 24 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

SPRING TERM, 1978

No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner.

v.

STATE BOARD OF EDUCATION and
KEITH GOSLIN, et al,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

James F. Schouman
21925 Garrison
Dearborn, Michigan 48124
Counsel for Petitioner

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

TABLE OF CONTENTS

	Page
Index to Authorities	ii
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Constitutional and Statutory Provisions Involved	4
Statement of the Case	5
How the Federal Questions Were Presented	8
Reasons For Granting the Writ	8
Argument 1	8
Argument 2	11
Argument 3	13
Conclusion	15
Appendix A - Decisions Below	16
Order of the Supreme Court of Michigan Denying Petitioner's Petition for Rehearing	A-1
Order of the Supreme Court of Michigan Denying Petitioner's Emergency Application for Leave To Appeal	A-3
Opinion of Michigan Court of Appeals	A-5
Order of Circuit Court, Ingham County	A-9
Order of Michigan State Board of Education	A-10

Case Citations: Page

Akron Board of Education v. State Board of Education of Ohio, 490 F.2d 1285 (6th Cir. 1974) 8,9,10

Brown v. Board of Education of Topeka, 347 U.S. 483 (1953) 11,12

Kramer v. Union Free School District No 15, 395 U.S. 621 (1969) 13

NAACP v. Button, 371 U.S. 415 (1963) 10,11

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 10,11

Statutory Provisions:

MICH. COMP. LAWS Sec. 380.951 (MICH. STAT. ANN Sec. 15.4951) 4,5,7,9, 11,12,14

MICH. COMP. LAWS Sec 24.301 (MICH. STAT. ANN. Sec. 3.560 (201)) 5,10

MICH. COMP. LAWS Sec. 24.205 (MICH. STAT. ANN. Sec 3.560 (105)) 5,10

IN THE

Supreme Court of the United States

SPRING TERM, 1978

No. _____

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner.

v.

STATE BOARD OF EDUCATION and
KEITH GOSLIN, et al,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

The petitioner, Owendale-Gagetown School District, prays that a writ of certiorari issue to review the denial of petitioner's petition for rehearing by the Supreme Court of the State of Michigan rendered in these proceedings on December 29, 1977.

OPINIONS BELOW

The Supreme Court of Michigan's order denying petitioner's petition for rehearing appears at Appendix A, *infra*, pp. A-1 through A-2. The Supreme Court of Michigan's order denying petitioner's emergency application for leave to appeal appears at Appendix A, *infra*, pp. A-3 through A-4. The opinion of the Michigan Court of Appeals is unreported and appears at Appendix A, *infra*, pp. A-5 through A-8. The order of the Ingham County Circuit Court is unreported and appears at Appendix A, *infra*, p. A-9. The order of the State of Michigan, State Board of Education is unreported and appears at Appendix A, *infra*, pp. A-10 through A-12.

JURISDICTION

The order of the Michigan Supreme Court denying petitioner's emergency application for leave to appeal was entered on September 21, 1977. (See Appendix A, pp. A-3 through A-4, *infra*). The order of the Supreme Court of the State of Michigan denying petitioner's petition for rehearing was entered on December 29, 1977. (See Appendix A, p. A-1, *infra*). This petition for certiorari was filed less than 90 days from the date petitioner's petition for rehearing was denied. The jurisdiction of this Court is invoked under 28 USC Sec. 1257(3).

QUESTIONS PRESENTED

1. Whether failure to grant a local school district standing to sue in the Michigan courts on behalf of its electors while statutorily granting such standing to other political subdivisions of the executive branch of state government is a denial of the equal protection guaranteed by the 14th Amendment of the Constitution of the United States.

2. Whether statutorily giving the members of a certain portion of a school district the right to transfer to another school district while denying the same right to other members of the school district is a denial of the equal protection guaranteed by the 14th Amendment of the Constitution of the United States.

3. Whether statutorily granting the members of a school district the right to vote against petitions transferring land to another school district and then construing said statute so as to effectively eliminate this right is a denial of the equal protection and due process guaranteed by the 14th Amendment of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. *Constitution of the United States, Amendment XIV, Sec. 1*

> ". . .or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. *Constitution of the State of Michigan, Article I, Sec. 2*

> "No person shall be denied the equal protection of the laws. . ."

3. *MICH. COMP. LAWS Sec. 380.951*

"An intermediate school board may detach territory from 1 school district and attach the territory to another if requested to do so by resolution of the board of a school district whose boundaries would be changed by the action, or if petitioned by not less than 2/3 of the persons who own and reside on the land to be transferred. The intermediate school board shall take final action within 60 days after the receipt of the resolution or petition. The territory shall be contiguous to the school district to which it is attached. If the latest assessed valuation of the area to be detached is more than 10% of the latest assessed valuation of the entire school district from which it is to be detached, the action of the intermediate school board shall not be effective unless approved by an affirmative vote of a majority of the school electors of the district from which the territory is to be detached."

4. *MICH. COMP. LAWS Sec. 24.301 (MICH. STAT. ANN. Sec. 3.560 (201)).*

> "When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law."

5. *MICH. COMP. LAWS Sec. 24.205 (MICH. STAT. ANN. Sec. 3.560 (105)).*

> "(4) "Person" means an individual, partnership, association, corporation, *governmental subdivision* or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling or contested case." (emphasis added)

STATEMENT OF THE CASE

This case involves the alteration of boundaries between petitioner Owendale-Gagetown School District and the Cass City School District as a result of a petition by Goslin, et al, resident landowners, and granting of this petition by the State Board of Education. Michigan law provides that whenever the area to be detached from the transferor school district exceeds 10% of the latest available taxable valuation of the transferor school district, this detachment must be approved by a majority of the school tax electors of the district (MICH. COMP. LAWS Sec. 380.951). The interpretation of this statute was the basis for the initial

litigation in the administrative and Ingham County Circuit Courts. A proper perspective of the issues before this court can best be gained by setting forth the chronology of events leading up to the property transfer that is here at issue.

First, on May 6, 1975, the State Board of Education, acting on a petition by resident landowners, transferred property belonging to Ellenbaum, et al, from petitioner Owendale-Gagetown School District to the Elkton Pigeon Bay Port School District. The area detached in that property transfer constituted 8.4% of the latest available taxable valuation of the entire Owendale-Gagetown School District.

Second, during the Ellenbaum proceedings before the State Board of Education, Goslin, et al, resident landowners of the Owendale-Gagetown School District, petitioned to have their property transferred to the Cass City School District. On May 19, 1976, the State Board of Education granted this property transfer request. (See Appendix A, pp. A-9 through A-12). The area detached and transferred constituted 9.2% of the latest available taxable valuation of the entire Owendale-Gagetown School District.

Your petitioner, Owendale-Gagetown School District, petitioned the Ingham County Circuit Court for judicial review of the State Board of Education's decision and order granting the Goslin property transfer request. The Honorable James T. Kallman, Circuit Judge, reversed the State Board of Education's order on grounds that the Goslin property transfer, when combined with the Ellenbaum property transfer, exceeded 10% of the latest

available taxable valuation of the Owendale-Gagetown School District, thereby requiring a vote of the people to effectuate the instant property transfer pursuant to MICH. COMP. LAWS Sec. 380.951. (See Appendix A, p. A-9).

The State Board of Education appealed the Circuit Court decision to the Michigan Court of Appeals. While that appeal was pending, the Michigan Court of Appeals granted the Motion to Intervene of Goslin, et al. On August 15, 1977, the Michigan Court of Appeals issued its opinion and order reversing the Ingham County Circuit Court on the basis that the Owendale-Gagetown School District lacked standing to challenge the Goslin property transfer on behalf of its electorate. (See Appendix A, pp. A-5 through A-8).

On August 29, 1977, petitioner, Owendale-Gagetown School District, filed an emergency application for leave to appeal and for a stay with the Michigan Supreme Court. This emergency application was denied without comment by the Supreme Court of Michigan on September 21, 1977. (See Appendix A, pp. A-3 through A-4).

On October 5, 1977, petitioner filed its petition for rehearing with the Michigan Supreme Court. The Court treated this petition as a motion for reconsideration and, again, denied petitioner leave to appeal. In its memorandum opinion the Michigan Supreme Court held that the Goslin property in controversy, by itself, constituted less than 10% of the latest available taxable valuation of the entire Owendale-Gagetown School District. (See Appendix A, pp. A-1 through A-2). This fact, however, was never questioned by petitioner or any other party to this action throughout the administrative and State court proceedings.

HOW THE FEDERAL QUESTIONS WERE PRESENTED

The federal questions sought to be reviewed here were raised by the Michigan Court of Appeals, by petitioner in its brief to the Michigan Court of Appeals, and by petitioner in its application for leave to appeal and petition for rehearing to the Supreme Court of Michigan.

REASONS FOR GRANTING THE WRIT

1. **The denial to a local school board of its right to appear before the courts of Michigan on behalf of its electorate constitutes a violation of the Fourteenth Amendment of the United States Constitution.**

In *Akron Board of Education v. State Board of Education of Ohio*, 490 F.2d 1285 (6th Cir 1974), *cert. denied* 417 U.S. 932 (1974) [hereinafter cited as *Akron Board of Education*], a municipal board of education sought an injunction restraining transfer of an area of previous jurisdiction of the municipal board to an adjoining school district. The School Board in *Akron Board of Education* argued that a transfer of attendance areas would result in great and incalculable expense and would deprive children in the Akron City School District of educational programs necessarily eliminated or curtailed on account of the transfer, or result in an increase in tax levies or both. This concern expressed by the Akron Board of Education is likewise an area of principal concern to petitioner, Owendale-Gagetown School District. The transfer of the Goslin property will continue to dwindle the tax base of petitioner school

district so necessary to provide its members with a quality education. Moreover, there are five other petitions to transfer property out of the Owendale-Gagetown School District which have been stayed pending the resolution of this case. Thus, those people within petitioner school district remaining by choice or forced to remain by the provisions of MICH. COMP. LAWS Sec. 380.951 will either continue to pay higher and higher taxes or their children will be forced to forego the benefits of a quality education.

In acknowledging the right of the school district to sue on behalf of its members the Court of Appeals for the 6th Circuit in *Akron Board of Education* stated:

> "Where, however, there is a close relationship between the plaintiffs who seek to bring an action and the class of persons whose constitutional rights are claimed to be violated, standing to sue has frequentiy been found." 490 F.2d at 1289.

The Court further stated:

> "We recognize, of course, that there is force to the argument of the District Judge that parents of school children whose rights are alleged to be abridged would be wholly proper plaintiffs as to whom the standing argument could not be raised. But it should be noted that the small area concerned and its minimal present impact would be much more likely to come to the attention of and arouse the concern of the School Board, which is the immediate object of the order alleged to be unconstitutional. Thus if jurisdiction is refused in a precedent setting case

> because the potential litigants, alert to the possible constitutional abuse, are denied standing, quite a bit of the unconstitutional camel may be in the tent before the tent's less alert occupants are awakened." 490 F.2d at 1289.

In the past this Court has held that where there is a close relationship between plaintiffs who seek to bring an action and a class of individuals whose constitutional rights are claimed to be violated standing to sue will be found. *NAACP v. Button*, 371 U.S. 4 5 (1963); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

The concern for quality education provided for the children of the Owendale-Gagetown School District financed through reasonable school levies is an interest shared by petitioner school district and the members of the school district. Because of its function and responsibilities petitioner is more able than the members of the school district to recognize the threat posed to this common interest by the transfer of land out of Owendale-Gagetown School District. By their action the Michigan courts have denied petitioner the opportunity to represent its members in asserting their constitutional right to a quality education and constitutional right to vote, even though a political subdivision, such as petitioner school district, has been granted standing to seek review of an administrative decision in the courts. MICH. COMP. LAWS Sec. 24.301 and MICH. COMP. LAWS Sec. 24.205. (See constitutional and statutory provisions involved, *supra*, p. 5).

The failure of the Michigan courts to grant petitioner standing to assert the constitutional rights of its constituents is thus a denial of the equal protection

guaranteed by the 14th Amendment of the Constitution of the United States and is contra to the holdings of this Court enunciated in *NAACP v. Button, supra* and *Pierce v. Society of Sisters, supra*.

2. Legislatively granting a portion of a school district's members the right to transfer to another school district while denying this same right to the other members of the district is a denial of the equal protection and due process guaranteed by the 14th Amendment of the Constitution of the United States and infringes upon the other members of the school district's fundamental right to equal educational opportunity.

This honorable court has mandated that where a state has undertaken to provide the opportunity of education for its residents, it must be made available to all on equal terms. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1953). Although *Brown* and its progeny dealt with the effect of school segregation upon this right to equal educational opportunity, the constitutional foundations upon which these cases stood are directly analogous to petitioner's situation. MICH. COMP. LAWS Sec. 380.951, *Transfer of Territory*, provides in relevant part:

> "An intermediate school board may detach territory from one school district and attach the territory to another if requested to do so . . . if petitioned by not less than 2/3 of the persons who own and reside on the land to be transferred . . . The territory shall be contiguous to the school district to which it is attached. . ."

The statute only gives the privilege of detachment and transfer to those school district members whose

property is located on the boundary line of another school district. The tax base of the transferor school district decreases and the local school board is forced to cut-back its expenses which correspondingly affects the quality of education in the school district. One group's transfer creates a snowballing effect upon the rest of the school district. Those members living on the borders of another district continue to petition the state school board for detachment and transfer under the statute. Those members living in the interior of the school district, however, are locked within its boundaries. Upon these people falls the unconstitutional burden of paying higher taxes for a lower educational return than their more fortunately located neighbors.

The privilege of choosing what type of educational opportunity their children may have cannot be conferred arbitrarily upon a portion of a school district's members at the economic and educational expense of the remainder of the school district. This is a denial of equal protection. Yet, this is the privilege conferred by the State Board of Education in its interpretation of MICH. COMP. LAWS Sec. 380.951. The mandate for equal educational opportunity of *Brown v. Board of Education of Topeka, supra*, should not be limited to cases of discrimination by race. The right to equal educational opportunity is granted to all individuals and should not arbitrarily be taken away by the state.

3. When a State has granted individuals suffrage with respect to local government matters, it cannot arbitrarily deprive these individuals in the exercise of that suffrage.

Petitioner concedes that a state has no obligation to grant voting rights when it establishes procedures for determining the boundaries of local governments, including school districts. However, petitioner contends that once this privilege has been granted it is a denial of due process and equal protection to arbitrarily withhold this privilege.

In *Kramer v. Union Free School District No 15*, 395 U.S. 621 (1969), a New York law required ownership of property within the school district or parenthood or custody of children enrolled in the school district as a perquisite to an individual's voting in a school district election. This court held the New York law to be violative of the 14th Amendment in that it excluded from voting persons having a direct interest in school affairs. This honorable court further stated:

> "We have held that where a county school board is an administrative, not legislative, body, its members need not be elected. (citations omitted) However, once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." 395 U.S. at 629.

Michigan law states:

> ". . . If the latest assessed valuation of the area to be detached is more than 10% of the latest assessed valuation of the entire school district from which it is to be detached, the action of the intermediate school board shall not be effective unless approved by an affirmative vote of a majority of the school electors of the district from which the territory is to be detached." MICH. COMP. LAWS Sec. 380.951.

The State Board of Education has interpreted this statute irrationally to make it possible for an unlimited number of petitioners to gain detachment and transfer so long as each group of petitioned land comprises less than 10% of the latest tax valuation of the entire school district. This interpretation effectively frustrates the meaning of the statute and deprives the members of the school district from exercising the right to vote on land transfers granted them by the Michigan statute. The trial judge agreed that the State Board of Education's reading of the statute defeated the legislative intent and held:

> "Accordingly, it is the judgment of this court that the ten percent of the school district area, I'm trying to find a way to phrase this; means from this court's reading of the statute and a reading of the rest of your briefs that it is applicable to the taxable evaluation of the entire school district when originally created and that thereafter once the ten percent has been reached of the current available taxable evaluation of area which increases, once it is reached, that portion, ten percent that thereafter it must go to the electors of that school district for an affirmative vote of the majority of the school tax electors involved." (See certified record, excerpt judge's ruling pp. 9-11).

The reviewing Michigan State Courts decided this case solely on the standing issue and did not render an opinion on the trial judge's interpretation of this statute. Petitioner contends that any interpretation of this transfer statute, other than that given by the trial judge, does not serve a rational purpose and is violative of the Fourteenth Amendment due process and equal protection.

CONCLUSION

The issues set forth in this petition are of importance not only to petitioner but to many other school districts in the State of Michigan. Transfer petitions in the Owendale-Gagetown School District and other Michigan school districts have been stayed pending the resolution of this case. For these reasons, a writ of certiorari should issue to review the holding of the Michigan Supreme Court.

Respectfully submitted,

James F. Schouman
Attorney for Petitioner
Business Address:
21925 Garrison
Dearborn, Michigan 48124
(313) 561-3548

Dated: March 21, 1978

APPENDIX A

THE DECISIONS BELOW

Here are set forth successively, the order of the Supreme Court of Michigan denying petitioner's petition for rehearing; the order of the Supreme Court of Michigan denying petitioner's emergency application for leave to appeal; the opinion of the Michigan Court of Appeals; the order of the Circuit Court, Ingham County, reversing the decision of the Michigan State Board of Education; the order of the Michigan State Board of Education.

ORDER DENYING PETITION FOR REHEARING

(State of Michigan — Supreme Court)

Owendale-Gagetown School District, Plaintiff-Appellant, v State Board of Education, Defendant-Appellee, and Keith J. Goslin, et al, Intervening Defendants-Appellees.

At a session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing the 29th day of December in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable Thomas Giles Kavanagh, Chief Justice; G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., Associate Justices

On order of the Court, plaintiff-appellant's petition for rehearing is DENIED because GCR 1963, 864.4, provides for the filing of such petitions only in opinion cases. Plaintiff-appellant's petition is treated as a motion for reconsideration of this Court's order of September 21, 1977, and the motion is DENIED, because it does not appear to the Court that said order was entered erroneously. MCLA 340.461; MSA 15.3461 provides for a vote of the school tax electors on a transfer only when "the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached". The record discloses that the latest available tax valuation of the area to be detached in this case is less than 10% of the Owendale-Gagetown School District as constituted at the time of the State Board of Education decision.

Certificate

State of Michigan—ss.

I Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript thereform, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 29th day of December in the year of our Lord one thousand nine hundred and seventy-seven.

/s/ Corbin R. Davis
Deputy Clerk

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

(State of Michigan — Supreme Court)

Owendale-Gagetown School District, Plaintiff-Appellant, v State Board of Education, Defendant-Appellee, and Keith J. Goslin, et al, Intervening Defendants-Appellees.

At a session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 21st day of September in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable Thomas Giles Kavanagh, Chief Justice; G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., Associate Justices.

On order of the Court, the emergency application for leave to appeal is considered, and it is DENIED, because the appellant has failed to persuade the Court that the questions presented should be reviewed by this Court.

The motion by appellant for a stay of proceedings becomes thereby moot and is DENIED.

Certificate

State of Michigan—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 21st day of September in the year of our Lord one thousand nine hundred and seventy-seven.

/s/ Corbin R. Davis
Deputy Clerk

OPINION

(State of Michigan — Court of Appeals)

Owendale-Gagetown School District, Plaintiff-Appellee, v State Board of Education, Defendant-Appellant, and Keith J. Goslin, et al, Intervening Defendants-Appellants.

BEFORE: Walsh, P.J., Quinn and Hunter D. Stair, JJ.

PER CURIAM

The State Board of Education appeals from an order of the Ingham County circuit court reversing the board's decision to allow the transfer of property from the Owendale-Gagetown School District to the Cass City School District. By order of this court dated February 18, 1977, the property owners who initiated the procedure (hereinafter "petitioners") were permitted to intervene.

In March or April, 1975, Keith J. Goslin and other residents of the Owendale-Gagetown School District petitioned the Huron and Tuscola Intermediate Boards of Education pursuant to the School Code of 1955, MCLA 340.1 *et seq*; MSA 15.3001 *et seq*,[1] seeking to have their property transferred to the Cass City school district. On May 14, 1975, the intermediate boards denied the petition which decision was subsequently reversed by the State Board of Education in an order dated May 19, 1976.

On June 18, 1976, the plaintiff commenced suit against the State Board of Education alleging, among other things[2], that the property transfer violates MCLA 340.461; MSA 15.34613. The statute provides in relevant part:

> "The county board of education may, in its discretion, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than 2/3 of the resident owners of the land to be transferred. * * * Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon."

The district charged that the petitioners' property, together with that proposed to be transferred to the same and other school districts in five other petitions then pending, exceeded 10% of the state equalized valuation of the district and necessitated a vote. According to the plaintiff, the petitioners' property itself represented 9.25% of the district's valuation.

In interpreting MCLA 340.461; MSA 15.3461, the circuit court sought to prevent a district from being dissipated without a vote by its residents. Accordingly, the court construed "entire school district" to refer to the district as originally formulated and ruled that in applying the 10% figure, all property, whenever transferred, was to be considered.

Among the arguments presented on appeal, petitioners contend that the school district lacks standing to assert the voting rights of its residents. This court agrees.

Whether the residents of the Owendale-Gagetown School District are entitled to vote on the proposed transfer is an issue to be raised by the residents themselves: the school district lacks standing to assert such a claim. *School District of the City of Lansing v State Board of Education*, 367 Mich 591; 116 NW2d 866 (1962).[4]

Given our decision, we need not decide the propriety of the circuit court's ruling.

The judgment of the circuit court is reversed. As the remaining issues raised by plaintiff in the lower court were abandoned, no further action is necessary. No costs are awarded, a public question being involved.

[1] Repealed by the School Code of 1976, effective January 1, 1977. 1976 PA 451; MCLA 380.1 *et seq*; MSA 15.4001 *et seq*.

[2] The school district also alleged that the decision of the State Board of Education violated § 81 of the Administrative Procedures Act of 1969, MCLA 24.281; MSA 522.18, and was arbitrary and capricious. In addition, the plaintiff challenged, on various grounds, a resolution of the State Board of Education directing the Superintendent of Public Instruction to deny the district's application for bonding authority.

None of the additional issues raised were subsequently argued in plaintiff's brief to the circuit court. Failure to brief an issue on appeal constitutes abandonment of the question. *Mitcham v City of Detroit*, 355 Mich 182; 94 NW2d 388 (1959), *City of St. Ignace v McFarlane*, 45 Mich App 81; 206 NW2d 226 (1973).

[3] Presently, MCLA 380.951; MSA 15.4951.

[4] An attorney did enter an appearance on behalf of the Owendale-Gagetown Citizen Committee. However, no further action was taken by that group.

JUDGMENT OF REVERSAL OF ORDER OF STATE BOARD OF EDUCATION

(State of Michigan
In the Circuit Court for the County of Ingham)

The Glendale-Gagetown School District, Plaintiff-Appellant, vs. State Board of Education, Defendant-Appellee. File No. 76-18988-AA

At a session of the court held in the City of Lansing, County of Ingham, on this Second day of August, 1976.

PRESENT: HONORABLE James T. Kallman, Circuit Judge.

Upon reading and filing the pleadings filed in this matter and the briefs in support thereof, and the matter having been argued in court and the opinion of the court having been dictated from the bench and incorporated herein by reference as if more fully set forth herein:

It is ordered that the Order of the State Board of Education transferring property in this matter of Keith J. Goslin, et al, State Board of Education, Transfer Case No. 1431 is hereby reversed.

/s/ Hon. James T. Kallman
Circuit Judge

Dated: 8/2/76
Approved as to form:

/s/ Charles F. Keeley
Assistant Attorney General

ORDER

STATE OF MICHIGAN
STATE BOARD OF EDUCATION

Dated this 19th day of May, 1976.

PRESENT: Dr. John W. Porter, Chairman, Miss Marilyn Jean Kelly, Dr. Gorton Riethmiller, Mr. Edmund F. Vandette, Mrs. Annetta Miller, Mrs. Barbara A. Dumouchelle, Dr. Paul B. Henry, Mrs. Barbara Roberts, and Mr. Norman Stockmeyer.

This matter having come on for consideration by the State Board of Education for the State of Michigan, upon the appeal of Keith J. Goslin, et al, concerning the following described property:

Columbia Twp:

Sec. 13 S½ of NE¼ & SE¼ of SE¼
Sec. 24 SE¼ of NE¼

Elmwood Twp:

Sec. 3 NE¼; SW¼; & W½ of W½ of SE¼
Sec. 4 SE¼: & S½ of NE¼
Sec. 8 E½ of SW¼; SW¼ of SW¼; & W2OA of S½ of SE¼
Sec. 9 E½
Sec. 10 All
Sec. 11 SW¼ of SW¼

Sec. 15 N½ of NW¼
Sec. 16 All
Sec. 17 All
Sec. 18 except N½ of NW frl ¼ & N½ of S½ of NW frl ¼
Sec. 19 except SE¼ & SE¼ of SW frl ¼
Sec. 20 except S½ of SW frl ¼
Sec. 21 except N½ of SE¼

from the action of the joint Huron and Tuscola Intermediate Boards of Education, taken May 14, 1975, denying the transfer of certain property from the Owendale-Gagetown School District to the Cass City School District, and notice having been given to the interested parties, and the State Board of Education having appointed a Hearing Officer to hear the appeal pursuant to the provisions of Act 382, P.A. 1965, and after due notice the Hearing Officer having heard all interested parties and having filed a transcript which was furnished to the designated appellant and appellee, and the appellant and appellee having filed written objections to the transcript within twenty days, and the State Board of Education having considered the transcript and the written objections of the appellant and appellee, and the State Board of Education having taken said appeal under consideration, and having been fully advised in the premises:

Motion by Mrs. Dumouchelle, seconded by Mrs. Roberts, that the State Board of Education reverse the action of the joint Huron and Tuscola Intermediate Boards of Education and transfer the property under consideration in Case 1431 from the Owendale-Gagetown School District to the Cass City School District.

Reasons for Decision:

While there may be comparability of educational programs at the elementary level, the secondary program offered by the receiving district is broader; it is the desire of the petitioners to have a total educational experience of high quality for their children; the majority of the children are not now attending school in Owendale-Gagetown, so there would be relatively little if any loss of school population from the sending district; there is room in the receiving district. They have adequate facilities and are willing to educate the children who are for the most part enrolled there now; the transfer would be from a district that is not accredited to a larger district that is accredited; testimony reveals that the losing district lacks the enrollment to offer a comprehensive curriculum, the present program is less than ideal, and prospects for increased enrollment appears minimal; the economical operation of an educational program and provision for it would be at best minimal in the losing district; and there appears to be little possibility that the petitioners in the transfer area would be an asset to the losing district.

IT IS ORDERED that the action of the joint Huron and Tuscola Intermediate Boards of Education be reversed and the above described property be transferred from the Owendale-Gagetown School District to the Cass City School District, be and the same is hereby confirmed.

/s/ John W. Porter, Chairman
State Board of Education

cc: Administrative Secretary to the State Board of Education

Supreme Court, U. S.
FILED
APR 24 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENTS, KEITH GOSLIN, et al, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BARLEY & KLEEB, P.C.

Robert E. Kleeb, Esq.

Attorneys for Respondents,
Keith Goslin, et al.

Business Address:

213 E. Grand River Avenue
Howell, Michigan 48843
(517) 546-7363

PRINTED BY SPEAKER-HINES AND THOMAS., INC., LANSING, MICHIGAN—1978

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Argument	
THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW	3
Conclusion and Relief	6

TABLE OF CITATIONS

CASES

	Page
Akron Board of Education v. State Board of Education of Ohio, 490 F.2d 1285, (6th Cir 1974), cert. denied, 417 U.S. 932 (1974)	5
New York v. New Jersey, 262 U.S., 192	4
Pawhuska v. Pawhuska Oil Company, 250 U.S. 394	4
Railway Commission v. Los Angeles, R.y. Corp., 280 U.S. 145, 156	4
Risty v. Chicago R.I. & Ry Company, 270 U.S. 378, 390	4
Tileston v. Ullman, 318 U.S. 44 (1943)	4
Trention v. New Jersey, 262 U.S. 182	4
Triplett v. Tieman, 302F. Supp. 1239 (1142); D, Neb. (1969)	5
Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 40, 47 (1933)	3, 4
Worcester v. Worcester Consolidated Street Railway Company, 196 U.S. 539	4

MICHIGAN PUBLIC ACTS

1955 PA 269, § 461, MCLA 340.461; MSA 15.3461	4, 6
1970 MCL, § 24.301; MSA Sec. 3.560 (201)	4
1976 PA 451, § 951, MCLA 380.951; MSA 15.4951	3, 6

MISCELLANEOUS

Supreme Court Rule 19 1. (a)	6

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENTS, KEITH GOSLIN, et al, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Respondents, KEITH GOSLIN, et al, accepts Petitioner's statement of the opinions below.

JURISDICTION

Respondents, KEITH GOSLIN, et al, accepts Petitioner's statement of jurisdiction.

QUESTION PRESENTED

Whether the Michigan Supreme Court in its Order denying Petition for Rehearing removed any Federal question by its interpretation of the Michigan Statute?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1955 PA 269, § 461, MCLA 340.461; MSA 15.3461:(1)

"An intermediate school board may detach territory from 1 school district and attach the territory to another if requested to do so by resolution of the board of a school district whose boundaries would be changed by the action, or if petitioned by not less than 2/3 of the persons who own and reside on the land to be transferred. The intermediate school board shall take final action within 60 days after the receipt of the resolution or petition. The territory shall be contiguous to the school district to which it is attached. If the latest assessed valuation of the area to be detached is more than 10% of the latest assessed valuation of the entire school district from which it is to be detached, the action of the intermediate school board shall not be effective unless approved by an affirmative vote of a majority of the school electors of the district from which the territory is to be detached."

STATEMENT OF THE CASE

The statement as set forth in Petitioner's Brief is adopted by Keith Goslin, et al, with the exception of the last paragraph of page 7 of Petitioner's Brief. It is correct that on October 5, 1977, the Petitioner filed its Petition for Rehearing with the Michigan Supreme Court. The Court treated that Petition as a Motion for Reconsideration which is permissible pursuant to the Michigan Court Rules. Petitioner is incorrect when it states that the issue of statuory interpretation concerning 10% was never raised before the Courts. Petitioner at all levels of the appellate proceedure has argued that in determining

whether or not the Goslin Parcel exceeded 10% of School District's state equalized valuation, all prior transfers since the School District's inception must be included in the computation of the 10%. The Michigan Supreme Court concluded otherwise and held that the value of the District is the valuation of the District as constituted at the time each transfer request is heard before the State Board of Education, see Petitioners' Brief, Appendix A-1. In its memorandum opinion, the Michigan Supreme Court made a constitutional interpretation of the 10% provision of Michigan Compiled Law, Sec. 380.951.

ARGUMENT

THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW.

Keith Goslin et al, Respondents, have steadfastly maintained that pending a statutory interpretation of Michigan Compiled Laws, Sec. 380.951, by the Supreme Court of the State of Michigan, if there were any person or persons entitled to have the transfer placed upon the ballot for the general public, they must be persons within the meaning of the Michigan and Federal Constitutions. The Petitioner School District is not a person within the scope of the Fourteenth Amendment of the United States Constitution. In *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 47 (1933), the Court speaking through Mr. Justice Cardozo, at pg. 40, says,

"There is error in the holding of the Circuit Court of Appeals that the statute of Maryland creating this exemp-

tion is a denial to the Respondent of equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States. A Municipal Corporation, created by a State for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may evoke in opposition to the will of its creator."

Mr. Justice Cardozo then cited in support thereof, *Trention v. New Jersey*, 262, U.S. 182; *New York v. New Jersey*, 262 U.S., 192; *Worcester v. Worcester Consolidated Street Railway Company*, 196 U.S. 539; *Pawhuska v. Pawhuska Oil Company*, 250 U.S. 394; *Risty v. Chicago R.I. & Ry Company*, 270 U.S. 378, 390; *Railway Commission v. Los Angeles, R.y. Corp.*, 280 U.S. 145, 156.

It has never been argued and for purposes of this Petition, is conceded that the Petitioner had the right to file an appeal of the State Boards' determinations in the Circuit Court for Ingham County, the Michigan Court of Appeals, and seeking leave to appeal to the Michigan Supreme Court. This right is created by the Administrative Procedures Act of the State of Michigan, 1970 Michigan Compiled Laws, Sec. 24.301, (MSA Sec. 3.560 (201)).

Petitioner claims the limitation of 1955 PA 269 Sec. 461, supra, that only contiguous property may be transferred to another school district, is violative of the Fourteenth Amendment. Petitioner lacks standing to raise this constitutional claim either on its own behalf or on behalf of some of its residents. *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36 (1933); *Tileston v. Ullman*, 318 U.S. 44 (1943).

The Michigan Court of Appeals acknowledged that school district residents had such a right when it said,

"It should be noted that a citizens group appeared in the case at the Circuit Court level, in opposition to the transfer, and then elected not to participate further in this litigation."

See Petitioner's Appendix A-7, A-8, footnote 4. Thus, the residents of the Petitioner School District elected not to press their alleged constitutional rights herein.

A further discussion of the question of equal protection was made by the Federal District Court of Nebraska, Here the Court in a suit between a school district and the State Board of Education in *Triplett v. Tieman*, 302F. Supp. 1239 (1142); D, Neb. (1969), held at page 1242,

"The Plaintiff's school district are legally not subject to injury under the equal protection clause. The equal protection clause of the Fourteenth Amendment has no obligation to the acts of a State against its own political subdivisions."

Petitioner relies heavily upon *Akron Board of Education v. State Board of Education of Ohio*, 490 F.2d 1285, (6th Cir 1974), cert. denied, 417 U.S. 932 (1974) (hereinafter referred to as Akron Board of Education). In the Akron Board of Education suit, the Supreme Court in denying certiorari, upheld the lower Court's relief that while the school board was not a person under the equal protection clause of the Fourteenth Amendment, the school Superintendent was. This is ascertained from the entitlement of the Petition for Certiorari which includes as Plaintiffs Appellant, one Conrad C. Ott, Akron School Superintendent. Petitioner herein did not include its Superintendent of schools at any stage of the proceedings.

For purposes of argument, it is conceded that the Michigan Court of Appeals in reversing the Ingham County Circuit Court, made the reversal on the basis that Petitioner was not

a proper party to raise the question. The Supreme Court of Michigan, in its original Order denying application for leave to appeal, A-3 of Petitioner's Brief, made no attempt at statutory interpretation. However, in its Order denying Petition for Rehearing, see Respondents' Brief, Appendix A-1, the Michigan Supreme Court interpreted the Michigan Statute Mich. Com. M.C.L.A. 340.461; M.S.A. 15.3461. In doing so, it specifically referred to and interpreted the 10% provision of said statute in its opinion. (See Respondents' Appendix A-1.) In doing so, the Michigan Supreme Court resolved the initial issue raised in the Ingham County Circuit Court by Petitioner against the Petitioner. Further, the Michigan Supreme Court in that decision, acknowledged the right of Petitioner School District to appeal, thus precluding Petitioner from claiming any violation of equal protection, should such exist.

There exists at the present time, no Federal question to which this Court should address itself and therefore, Petitioner's writ for certiorari should be denied with costs awarded to your Respondent.

CONCLUSION AND RELIEF

Petitioner sought and obtained below a ruling of its State statutory claim. Petitioner has failed to raise any Federal question of substance as contemplated by Supreme Court Rule 19 1. (a). Thus, for the foregoing reasons, the Petition for a Writ of Certiorari should be denied by this Court.

Respectfully Submitted,

BARLEY & KLEEB, P.C.

Robert E. Kleeb, Esq.
Attorneys for Keith Goslin, et al.
213 E. Grand River Avenue
Howell, Michigan 48843

Supreme Court, U. S.
FILED
APR 17 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977

No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENT, STATE BOARD OF EDUCATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Gerald F. Young
Charles F. Keeley
Assistant Attorneys General

Attorneys for Respondent State
Board of Education

Business Address:
750 Law Building
525 West Ottawa Street
Lansing, Michigan 48913
(517) 373-1116

PRINTED BY SPEAKER-HINES AND THOMAS., INC., LANSING, MICHIGAN—1978

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Argument	
THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW	4
A. Petitioner was allowed to raise its state statutory claim in the Michigan Supreme Court	4
B. The statutory requirement that only contiguous property may be transferred to another school district is clearly constitutional	5
C. School district boundary changes need not be made dependent upon a vote of the people	6
Conclusion and Relief	6

TABLE OF CITATIONS

CASES	Page
Hunter v City of Pittsburgh, 207 US 161 (1907)	6
Kramer v Union Free School District No. 15, 395 US 621 (1969)	6
Sailors v Kent Board of Education, 387 US 105 (1967)	6
San Antonio Independent School District v Rodriguez, 411 US 1 (1973)	5
Tileston v Ullman, 318 US 44 (1943)	5, 6
Williams v Mayor and City Council of Baltimore, 289 US 36 (1933)	5, 6
MICHIGAN PUBLIC ACTS	
1955 PA 269, § 461, MCLA 340.461; MSA 15.3461	2, 4, 5
1976 PA 451, § 951, MCLA 380.951; MSA 15.4951	2
MISCELLANEOUS	
Supreme Court Rule 19 1. (a)	7

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977

No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENT, STATE BOARD OF EDUCATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Respondent, State Board of Education, accepts petitioner's statement of the opinions below.

JURISDICTION

Respondent, State Board of Education, accepts petitioner's statement of jurisdiction.

QUESTION PRESENTED

Whether a decision by the Michigan Supreme Court, construing a Michigan statute dealing with transfers of property

between school districts as not requiring a vote of the people to effectuate the instant transfer, involves a federal question of substance which this Court should review?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1955 PA 269, § 461, MCLA 340.461; MSA 15.3461:[1]

> "An intermediate school board may detach territory from 1 school district and attach the territory to another if requested to do so by resolution of the board of a school district whose boundaries would be changed by the action, or if petitioned by not less than 2/3 of the persons who own and reside on the land to be transferred. The intermediate school board shall take final action within 60 days after the receipt of the resolution or petition. The territory shall be contiguous to the school district to which it is attached. If the latest assessed valuation of the area to be detached is more than 10% of the latest assessed valuation of the entire school district from which it is to be detached, the action of the intermediate school board shall not be effective unless approved by an affirmative vote of a majority of the school electors of the district from which the territory is to be detached."

STATEMENT OF THE CASE

Respondent, State Board of Education, accepts petitioner's

[1]

Subsequent to the granting of the property transfer here in question by the State Board of Education, 1955 PA 269, § 461, *supra*, was repealed and replaced by 1976 PA 451, § 951, MCLA 380.951; MSA 15.4951. There has been no change of substance in the more recent statutory provision.

statement of the case, at pp 5-7 of the petition for certiorari, with the following additional comments. The Michigan Supreme Court order of December 29, 1977, denying petitioner's motion for reconsideration, at pp A-1, A-2 of petitioner's appendix, provides:

> ". . . MCLA 340.461; MSA 15.3461 *provides for a vote of the school tax electors on a transfer only when* 'the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached'. The record discloses that the latest available tax valuation of the area to be detached in this case is less than 10% of the Owendale-Gagetown School District as constituted at the time of the State Board of Education decision." (emphasis added)

Thus, it is manifest that, unlike the Michigan Court of Appeals, (See petitioner's appendix, A-7), the Michigan Supreme Court addressed petitioner's statutory claim under Michigan law and decided the claim adversely to petitioner. Petitioner is now attempting to assert alleged federal questions as a basis for obtaining review by this Court.

ARGUMENT

THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW.

A. Petitioner was allowed to raise its state statutory claim in the Michigan Supreme Court.

Petitioner attempts to convey the impression that it was denied standing by the Michigan appellate courts to raise its state statutory claim. That claim is that, pursuant to 1955 PA 269, § 461, *supra*, the instant transfer could not be effectuated without a vote of the people in the petitioner school district because, *based on a historical accumulation of prior transfers and the instant transfer,* over 10% of petitioner's state equalized valuation would have been transferred. The circuit court agreed with petitioner. See petitioner's appendix A-9.

On appeal, the Michigan Court of Appeals held that petitioner lacked standing to raise its state statutory claim, a holding with which this respondent respectfully disagrees. However, on reconsideration in the Michigan Supreme Court, that Court addressed petitioner's state statutory claim and decided it adversely to petitioner. Compare petitioner's appendix A-1 and A-7. Thus, clearly petitioner was granted standing by the Michigan Supreme Court to raise its statutory claim that was the basis of petitioner's lawsuit. See petitioner's brief at pp 5-6 and petitioner's appendix at A-6 and A-8, fn 2.

Since petitioner was granted standing by the Michigan Supreme Court to raise its state statutory claim, petitioner's first alleged reason for granting its petition is without substance. It is a straw man argument not rooted in the procedural and substantive history of this litigation. The statutory claim petitioner sought to raise from the inception of this litigation was considered and decided adversely by the Michigan Supreme Court.

B. The statutory requirement that only contiguous property may be transferred to another school district is clearly constitutional.

Petitioner claims that the requirement of 1955 PA 269, § 461, *supra*, that only contiguous property may be transferred to another school district, is violative of the Fourteenth Amendment. Petitioner lacks standing to raise this constitutional claim either on its own behalf or on behalf of some of its residents.[2] *Williams* v *Mayor and City Council of Baltimore,* 289 US 36 (1933); *Tileston* v *Ullman,* 318 US 44 (1943).

Education is not a right protected by the Federal Constitution. Thus, public school district boundary requirements, like public school financing laws, are subject to the rational basis test. *San Antonio Independent School District* v *Rodriguez,* 411 US 1, 35-40, 53-54 (1973). Clearly, the contiguity requirement for property transfers between school districts is rational since it serves to facilitate school district administration in matters of elections, taxation, transportation and com-

---

[2]

It should be noted that a citizens group appeared in the case at the circuit court level, in opposition to the transfer, and then elected not to participate further in this litigation. See petitioner's appendix A-7, A-8, fn 4. Thus, the residents of the petitioner school district elected not to press their alleged constitutional rights herein.

munity esprit de corps. There is no constitutional right to non-contiguous municipalities or school districts.

C. School district boundary changes need not be made dependent upon a vote of the people.

Petitioner lacks standing to raise the constitutional claim, that the residents of the petitioner school district have a right to vote on the property transfer in question, either on its own behalf or on behalf of some of its residents. *Williams* v *Mayor and City Council of Baltimore, supra; Tileston* v *Ullman, supra.*

At page 13 of the petition for a writ of certiorari "[p]etitioner concedes that a state has no obligation to grant voting rights when it establishes procedures for determining the boundaries of local governments, including school districts. . . ." That statement is in accord with settled law and disposes of petitioner's third reason for granting the writ of certiorari. *Hunter* v *City of Pittsburgh,* 207 US 161, 178-179 (1907). There is simply no constitutional requirement that property transfers between school districts must be made subject to a popular vote.

The case relied upon by petitioner, *Kramer* v *Union Free School District No. 15,* 395 US 621, 629 (1969), only holds that once the franchise has been granted to the electorate as to a particular question, then the individual's right to vote may not be arbitrarily denied. *Kramer, supra,* does not require that any particular questions be submitted to the voters for decision. See also *Sailors* v *Kent Board of Education,* 387 US 105 (1967).

CONCLUSION AND RELIEF

Petitioner sought and obtained below a ruling on its state statutory claim. Petitioner has failed to raise any federal question of substance as contemplated by Supreme Court Rule 19 1. (a). Thus, for the foregoing reasons, the petition for a writ of certiorari should be denied by this Court.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Gerald F. Young
Charles F. Keeley
Assistant Attorneys General

Attorneys for Respondent State
Board of Education

Business Address:
750 Law Building
525 West Ottawa Street
Lansing, Michigan 48913
(517) 373-1116